BEFORE THE KANSAS WORKERS COMPENSATION APPEALS BOARD

TRAPPER TYRELL Claimant	)	
V.	)	
ENERGY GUARD, LLC Uninsured Respondent	)	Docket No. 1,066,199
AND	)	
KANSAS WORKERS COMPENSATION FUND	)	

ORDER

STATEMENT OF THE CASE

The Kansas Workers Compensation Fund (Fund) requested review of the October 30, 2015, Award entered by Administrative Law Judge (ALJ) Thomas Klein. The Board heard oral argument on February 18, 2016. Mitchell W. Rice of Hutchinson, Kansas, appeared for claimant. Attorney for respondent, Terry J. Torline of Wichita, Kansas, did not personally appear, but previously submitted a brief. John C. Nodgaard of Wichita, Kansas, appeared for the Fund.

The ALJ found claimant's June 17, 2013, accident arose out of and in the course of his employment with respondent. The ALJ found claimant is permanently and totally disabled and determined claimant's requested modifications to his vehicle and home are necessary to cure and relieve the effects of his injury. The ALJ ordered respondent to provide the requested modifications.[1]

In an Order dated April 4, 2014, the findings of fact of which are incorporated herein, a Board Member found claimant's accidental injury arose out of and in the course of his employment.[2]

The Board has considered the record and adopted the stipulations listed in the Award.

---

[1] See P.H. Trans. (Apr. 6, 2015), Resp. Ex. 1 and Knowles Depo., Ex. 3.

[2] *Tyrell v. Energy Guard, LLC*, No. 1,066,199, 2013 WL 8366780 (Kan. WCAB Apr. 4, 2014).

ISSUES

The Fund argues claimant is not entitled to an award for permanent total disability because he is capable of engaging in substantial and gainful employment. The Fund argues the ALJ's Award requiring it to provide claimant with a handicapped vehicle should be reversed, or, alternatively, the Fund should be ordered to pay no more than modifications to a vehicle supplied by claimant. The Fund contends the modifications made to claimant's home were not previously authorized and were not medically necessary, but were rather a convenience to claimant, and it also should not be liable to pay for any modifications not installed in claimant's home.

Respondent concurs and supports the arguments and authorities as outlined in the Fund's Brief.

Claimant did not file a brief.

The issues for the Board's review are:

1. Did claimant's injury by accident arise out of and in the course of his employment with respondent?

2. Did claimant commit a reckless violation of respondent's workplace safety rules or regulations?

3. What is the nature and extent of claimant's disability?

4. Are the requested modifications to claimant's vehicle and home necessary to cure and relieve the effects of his injury?

FINDINGS OF FACT

Claimant began employment with respondent in October 2011 as a project manager, which he described as a sales position. The job required claimant to travel to various locations in Kansas and Oklahoma and introduce respondent's products to potential customers. Claimant worked from his home, though he went to respondent's office every Monday for a weekly meeting and to obtain his paycheck. Claimant was paid weekly on a commission basis. Respondent did not provide transportation or compensation for mileage, fuel, or overnight accommodations. Claimant was assigned leads by respondent but did not personally schedule appointments.

On June 17, 2013, claimant was scheduled to run two leads in Caldwell, Kansas. While traveling south on 183rd St. W, claimant failed to stop at the stop sign at 183rd St. W and MacArthur Rd. and was struck by an oncoming vehicle. Claimant sustained extensive

injuries as a result of the accident. Claimant is essentially quadriplegic, with limited use of his hands.

Sedgwick County Sheriff's Deputy Robert Abril investigated claimant's accident. Deputy Abril testified it is a violation of state law to enter into an intersection that is controlled by a stop sign if there is oncoming traffic that would impede or cause an impact.[3] Deputy Abril agreed that someone who fails to stop at an intersection controlled by a stop sign is acting recklessly, especially so if there is approaching traffic.[4] Deputy Abril testified claimant had a restriction on his drivers license requiring an ignition interlock device and that the vehicle did not have the device installed.[5]

Prior to the regular hearing, claimant contracted to build a new home. Bill Knowles, an estimator for Don Klausmeyer Construction, the company contracted to build claimant's new home, explained there is a base price for each home, and any additions or special requests cost an additional amount. Attached to his deposition is a list of estimates for various modifications to claimant's house, including those which were not built.[6] For example, a third-car garage, listed at $6,500, was not built onto the home, nor was the laminate flooring, estimated at a total $9,300. Don Klausmeyer Construction installed a 6-foot sliding door with beveled transition pieces valued at $250, but not the 6.5-foot door with a flat threshold valued at $2,200.[7]

Claimant testified he underwent driving training with a modified vehicle at Madonna Rehabilitation in Lincoln, Nebraska. Claimant indicated he could drive himself, and not have to rely on outside transportation, if he had a modified vehicle. Claimant obtained a quote from Kansas Truck Mobility showing the total cost for a new truck with modifications as $73,099.[8]

Claimant has an Associate Degree in general education, but did not complete a four-year degree program. He cannot move the fingers of his left hand individually, though he has a limited grasp. He can only slightly move the fingers of his right hand individually.

---

[3] Abril Depo at 25.

[4] *Id* at 27.

[5] *Id* at 24.

[6] See Knowles Depo. at 9 & 16-17, Ex. 3 at 1.

[7] See *id*., Ex. 4 at 1.

[8] See P.H. Trans. (Apr. 6, 2015), Fund Ex. 1.

Claimant cannot use his fingers to type.[9] Claimant can stand with the aid of a walker, but cannot walk.[10]

Dr. Paul Stein evaluated claimant at his counsel's request on June 19, 2014. Claimant had various pain complaints and significant loss of motor and sensory function in his upper and lower extremities. Dr. Stein reviewed claimant's records, history, and performed a physical examination. He testified:

> That [claimant] had sustained a left humeral midshaft fracture. That he had also sustained a spinal fracture at C3-4, with substantial spinal cord injury, related to the motor vehicle accident of June 17th, 2013. There was some improvement in neurological function, but he was still and was likely to remain paraplegic at approximately the C5 or C6 level. The injuries, the residuals, the treatment and any future paraplegic or quadriplegic treatment were causally related to the accident which was the primary and prevailing factor.[11]

Using the AMA *Guides*,[12] Dr. Stein found claimant sustained an 84 percent impairment to the body as a whole. He indicated claimant would require lifetime medical care. Dr. Stein imposed work restrictions:

> I gave work restrictions and I stated that any work activity would require the ability to walk, stand or climb, which he did not have. That he could not do any work requiring significant lifting or carrying. That he could not do any work requiring hand dexterity such as keyboarding, using tools or operating a motor vehicle. I also noted that any ability to be an employed would depend upon achieving a significantly higher level of education than he had at the time I saw him, as well as having very substantial workplace accommodations.[13]

Dr. Stein was not aware claimant had undergone driving training while at Madonna Rehabilitation. Dr. Stein testified he had concerns about claimant's ability to drive, but if a vehicle could be adequately adapted, he would defer to the expertise of Madonna Rehabilitation staff.

---

[9] See R.H. Trans. at 19-21.

[10] See *id*. at 33.

[11] Stein Depo. at 8.

[12] American Medical Ass'n, *Guides to the Evaluation of Permanent Impairment* (4th ed.). All references are based upon the fourth edition of the *Guides* unless otherwise noted.

[13] Stein Depo. at 10

Dr. Robert Barnett performed a wage and task loss analysis at claimant counsel's request via telephone on April 17, 2015. Dr. Barnett reviewed Dr. Stein's report and obtained information from claimant to generate his report. Claimant indicated to Dr. Barnett his average weekly wage was $2,400. Claimant was not working at the time of the interview. Dr. Barnett opined claimant was realistically unemployable without further adaptive education or training allowing him to work within his restrictions.

Dr. Barnett produced a list of nine unduplicated work tasks claimant performed in the five years prior to his accident. Dr. Stein reviewed the task list generated by Dr. Barnett. Of the 9 tasks on the list, Dr. Stein opined claimant could no longer perform 9, for a 100 percent task loss. Dr. Stein stated claimant was "permanently and essentially disabled."[14]

PRINCIPLES OF LAW

K.S.A. 2012 Supp. 44-501b states, in part:

> (a) It is the intent of the legislature that the workers compensation act shall be liberally construed only for the purpose of bringing employers and employees within the provisions of the act. The provisions of the workers compensation act shall be applied impartially to both employers and employees in cases arising thereunder.
>
> (b) If in any employment to which the workers compensation act applies, an employee suffers personal injury by accident, repetitive trauma or occupational disease arising out of and in the course of employment, the employer shall be liable to pay compensation to the employee in accordance with and subject to the provisions of the workers compensation act.
>
> (c) The burden of proof shall be on the claimant to establish the claimant's right to an award of compensation and to prove the various conditions on which the claimant's right depends. In determining whether the claimant has satisfied this burden of proof, the trier of fact shall consider the whole record.

K.S.A. 2012 Supp. 44-501(a)(1) states, in part:

> Compensation for an injury shall be disallowed if such injury to the employee results from:
> (A) The employee's deliberate intention to cause such injury;
> (B) the employee's willful failure to use a guard or protection against accident or injury which is required pursuant to any statute and provided for the employee;
> (C) the employee's willful failure to use a reasonable and proper guard and protection voluntarily furnished the employee by the employer;

[14] *Id*. at 12.

(D) the employee's reckless violation of their employer's workplace safety rules or regulations; or

K.S.A. 2012 Supp. 44-508(f)(3)(B) states:

The words "arising out of and in the course of employment" as used in the workers compensation act shall not be construed to include injuries to the employee occurring while the employee is on the way to assume the duties of employment or after leaving such duties, the proximate cause of which injury is not the employer's negligence. An employee shall not be construed as being on the way to assume the duties of employment or having left such duties at a time when the worker is on the premises owned or under the exclusive control of the employer or on the only available route to or from work which is a route involving a special risk or hazard connected with the nature of the employment that is not a risk or hazard to which the general public is exposed and which is a route not used by the public except in dealings with the employer. An employee shall not be construed as being on the way to assume the duties of employment, if the employee is a provider of emergency services responding to an emergency.

K.S.A. 2012 Supp. 44-508(f)(3)(A) provides:

The words "arising out of and in the course of employment" as used in the workers compensation act shall not be construed to include:

> (i) Injury which occurred as a result of the natural aging process or by the normal activities of day-to-day living;
>
> (ii) accident or injury which arose out of a neutral risk with no particular employment or personal character;
>
> (iii) accident or injury which arose out of a risk personal to the worker; or
>
> (iv) accident or injury which arose either directly or indirectly from idiopathic causes.

K.S.A. 2012 Supp. 44-510c(a)(2) states:

Permanent total disability exists when the employee, on account of the injury, has been rendered completely and permanently incapable of engaging in any type of substantial and gainful employment. Expert evidence shall be required to prove permanent total disability.

An injured worker is permanently and totally disabled when he is "essentially and realistically unemployable."[15]

K.S.A. 2012 Supp. 44-510h(a) states:

> It shall be the duty of the employer to provide the services of a health care provider, and such medical, surgical and hospital treatment, including nursing, medicines, medical and surgical supplies, ambulance, crutches, apparatus and transportation to and from the home of the injured employee to a place outside the community in which such employee resides, and within such community if the director, in the director's discretion, so orders, including transportation expenses computed in accordance with subsection (a) of K.S.A. 44-515, and amendments thereto, as may be reasonably necessary to cure and relieve the employee from the effects of the injury.

K.S.A. 2012 Supp. 44-510h(e) states:

> It is presumed that the employer's obligation to provide the services of a health care provider . . . shall terminate upon the employee reaching maximum medical improvement. Such presumption may be overcome with medical evidence that it is more probably true than not that additional medical treatment will be necessary after such time as the employee reaches maximum medical improvement. The term "medical treatment" as used in this subsection (e) means only that treatment provided or prescribed by a licensed health care provider and shall not include home exercise programs or over-the-counter medications.

ANALYSIS

1. Did claimant's injury by accident arise out of and in the course of his employment with respondent?

Respondent argues the "going and coming" rule bars compensation in this claim. Whether the going and coming rule bars compensation was addressed by a Board Member in the preliminary appeal Order.[16] The Board Member concluded the intrinsic travel exception applied to the facts and the going and coming rule did not apply. The Board agrees and adopts the analysis contained in the April 4, 2014, Order.

Respondent also argues the claimant is barred by K.S.A. 2012 Supp. 44-508(f)(3)(A)(iii) because the accident arose out of a risk personal to claimant. Respondent argues claimant's decision not to take the main highways from his home to the customer, and instead taking the more direct route using county and state roads, was a personal

---

[15] *Wardlow v. ANR Freight Systems*, 19 Kan. App. 2d 110, 113, 872 P.2d 299 (1993).

[16] *Tyrell, supra*, at fn. 2.

choice increasing his risk. As noted by the Board Member in the preliminary hearing appeal Order, the intersection of 183rd St. W and MacArthur Rd. is located on the most direct route between claimant's home in Bentley, Kansas, and the location of the customer in Caldwell, Kansas. No shorter route existed. The Board finds claimant was taking the most direct route from his home to the client's location while in the service of and performing a task for the benefit of respondent. Claimant's injury by accident arose out of and in the course of is employment with respondent.

2. Did claimant commit a reckless violation of respondent's workplace safety rules or regulations?

The Fund argues claimant committed a reckless violation of respondent's safety rules by running the stop sign and driving without an ignition interlock device. The Board adopts the conclusion of a Board Member in the appeal of the preliminary Order,[17] that held:

> The safety rule is generic and requires employees to "comply with the respective Local, State and Federal laws governing motor vehicle operations."[18]
>
> This case is similar to *Morris v. County of Gove, Inc*.[19] In *Morris*, the Respondent argued because a highway patrol trooper concluded claimant was speeding when his accident occurred compensation should be disallowed based upon K.S.A. 44-501(d)(1) as his speeding was analogous to a failure to use a safety device.[20] The ALJ and the Board disagreed. The Board wrote:
>
> Claimant's actions may well have been careless and negligent but the evidence does not rise to the level that his actions were intentional and deliberate. And the majority of cases involving violation of traffic laws such as speeding have failed to find willful misconduct on the strength of the violation.[21]
>
> The burden of a "reckless violation" appears less strict than that imposed by the "willful failure" burden. In *Wiehe,*[22] the Kansas Supreme Court quoted Restatement (Second) of Torts § 500 (a) (1965), pp. 587-588:

---

[17] *Tyrell, supra,* at fn. 2.

[18] P.H. Trans. (Dec. 5, 2013), Fund Ex. 4 at 28.

[19] *Morris v. County of Gove*, No. 1,022,983, 2006 WL 1275456 (Kan. WCAB Apr. 27, 2006).

[20] *Id.* at 3.

[21] *Id.* at 4-5, citing *Larson's Workers' Compensation Law*, § 37.03.

[22] *Wiehe v. Kukal*, 225 Kan. 478, 483-84, 592 P.2d 860 (1979).

> "**Types of reckless conduct.** Recklessness may consist of either of two different types of conduct. In one the actor knows, or has reason to know . . . of facts which create a high degree of risk of physical harm to another, and deliberately proceeds to act, or to fail to act, in conscious disregard of, or indifference to, that risk. In the other the actor has such knowledge, or reason to know, of the facts, but does not realize or appreciate the high degree of risk involved, although a reasonable man in his position would do so. An objective standard is applied to him, and he is held to the realization of the aggravated risk which a reasonable man in his place would have, although he does not himself have it.
>
> "For either type of reckless conduct, the actor must know, or have reason to know, the facts which create the risk. . . .
>
> "For either type of conduct, to be reckless it must be unreasonable; but to be reckless, it must be something more than negligent. It must not only be unreasonable, but it must involve a risk of harm to others substantially in excess of that necessary to make the conduct negligent. It must involve an easily perceptible danger of death or substantial physical harm, and the probability that it will so result must be substantially greater than is required for ordinary negligence."
>
> K.S.A. 2012 Supp. 21-5202(j) states:
>
> A person acts "recklessly" or is "reckless," when such person consciously disregards a substantial and unjustifiable risk that circumstances exist or that a result will follow, and such disregard constitutes a gross deviation from the standard of care which a reasonable person would exercise in the situation.

In order for claimant's failure to yield to the stop sign to be willful or reckless for the purposes of K.S.A. 2012 Supp. 44-501(a), there must be some showing of intent. There is nothing in the record that supports claimant willfully ran the stop sign. The facts of the case support claimant suffered an accident in the purest sense.

The only evidence of recklessness is Deputy Sheriff Abril's testimony stating claimant running a stop sign was reckless. The deputy's opinion does not analyze the issue by the standards set forth in *Wiehe*. The Board considers his opinions and finds them lacking.

Regarding claimant's failure to use an ignition interlock device, respondent presented no evidence that failure to use the device contributed to or caused claimant's injury by accident. As such, the Board finds this issue irrelevant.

3. What is the nature and extent of claimant's disability?

The determination of whether a claimant has been rendered totally and permanently disabled is a factual finding. A totality of the circumstances approach is utilized in making the permanent total disability determination.[23]

Claimant testified he had significant mobility issues related to his hands, arms and legs. Dr. Stein reviewed a task list prepared by Dr. Barnett and opined that based upon his restrictions, claimant could perform none of the tasks on the list. Dr. Stein then stated claimant was permanently and essentially disabled. Dr. Stein's opinions are consistent with claimant's testimony regarding his physical limitations and are uncontroverted.

Dr. Barnett testified claimant was realistically unemployable without adaptive education and training. On cross-examination, Dr. Barnett agreed claimant might be able to become employable with proper training and accommodation. However, Dr. Barnett testified claimant was unemployable at the present time. Dr. Barnett's opinions are also uncontroverted.

The uncontradicted evidence and the totality of the circumstances, consisting of claimant's testimony and the opinions of Drs. Stein and Barnett, support a finding that claimant was rendered completely and permanently incapable of engaging in any type of substantial and gainful employment as the result of his work-related injury by accident.

4. Are the requested modifications to claimant's vehicle and home necessary to cure and relieve the effects of his injury?

a. Vehicle and Modifications

The ALJ's Award is somewhat confusing regarding the extent of the ALJ's order relating to claimant's vehicle. The ALJ ordered the modifications listed in Respondent's Exhibit 1 to the preliminary hearing of April 9 [*sic*], 2015,[24] which includes the purchase of a new truck. The Fund, at oral argument before the Board, brought up the issue of who would own the vehicle, and argued that a vehicle was not considered medical treatment under the Kansas Court of Appeals holding in *Hedrick v. U.S.D. No. 259*.[25] Claimant, at oral argument before the Board, pointed out language in *Hedrick* which suggested the decision may have been different if the claimant had been a paraplegic seeking a specially

---

[23] See *Lyons v. IBP, Inc.*, 33 Kan. App. 2d 369, 102 P.3d 1169 (2004).

[24] The date of the preliminary hearing was April 6, 2015, not April 9, 2015.

[25] *Hedrick v. U.S.D. No. 259*, 23 Kan. App. 2d 783, Syl. ¶ 3, 935 P.2d 1083 (1997).

equipped vehicle.[26] Since the Board and the parties find the ALJ's order unclear, the Board will address the issue.

Claimant testified he is capable of driving if he had a modified vehicle. Claimant completed a driving evaluation program at Madonna Rehabilitation, where he drove twice.[27] Neither K.S.A. 2012 Supp. 44-510h nor K.A.R. 51-9-2 prohibit the modification of a vehicle or home to accommodate claimant's need for handicapped accessible facilities.[28] However, the Kansas Court of Appeals has held that the purchase of a personal motor vehicle is not medical treatment under K.S.A. 44-510(a).[29] In *Hedrick*, the Court wrote:

> For purposes of this case, it is not necessary to devise a precise definition of "medical treatment." Certainly, examination, diagnosis, and application of remedies would not encompass the purchase of a car. The natural and ordinary meaning of "medical treatment" is not so broad as to include an automobile purchased to afford an individual "independence in transportation." Moreover, the purchase of a car goes far beyond the limited transportation authorized by 44–510(a). Under the facts of this case, we conclude that medical treatment does not include the purchase of a car.[30]

The Board finds no other Kansas appellate cases dealing with this particular issue. The Board, however, has visited the issue since *Hedrick*. In *Butler v. Jet TV*,[31] the claimant, a paraplegic, requested the purchase of a vehicle. Citing *Hedrick*, the Board denied claimant's request, holding "the van itself is not medical treatment or a medical apparatus, and, therefore, cannot be ordered paid by the respondent."[32]

In *Davidson v. Meadowbrook Lodge Nursing Home,*[33] the Board was asked to determine whether a specially equipped van would be considered medical treatment. Citing *Butler*, the Board Member writing the opinion denied the request, but added, citing

---

[26] *Id.* at 786.

[27] See R.H. Trans. at 18-19.

[28] See *Froese v. Trailers & Hitches Inc.*, No. 1,036,333, 2010 WL 3093219 (Kan. WCAB July 27, 2010).

[29] See *Hedrick, supra.*

[30] *Id.* at 786.

[31] *Butler v. Jet TV,* No. 106,194, 1998 WL 229860 (Kan. WCAB Apr. 14, 1998).

[32] *Id.* at 6.

[33] *Davidson v. Meadowbrook Lodge Nursing Home*, No. 210,158, 2000 WL 973222 (Kan. WCAB June 29, 2000).

Hedrick, "the costs associated with making the van handicapped accessible, however, do fit the definition of medical apparatus."[34]

In *Froese v. Trailers & Hitches, Inc.*,[35] a Board Member found the claimant, a paraplegic, failed to prove a vehicle is medical treatment. The cost of equipping a vehicle to accommodate claimant's injuries, however, was found to be medical treatment. In *Bhattarai v. Taco Bell,*[36] a Board Member reversed a preliminary hearing order that an employer provide claimant, a quadriplegic, with a vehicle.

While the Court of Appeals in *Hedrick* specifically wrote the purchase of a vehicle was not medical treatment, it pointed out the case did not involve a paraplegic claimant seeking a specially equipped vehicle and referenced a split of authority among jurisdictions that have addressed the issue. The Board does not find this dicta in the *Hedrick* opinion to mean that if a claimant were a paraplegic, or in this case a quadraplegic, the purchase of a vehicle would be medical treatment contemplated by K.S.A. 44-510h(a). The Board finds, consistent with *Hedrick* and its earlier rulings, that providing a new pickup truck does not constitute medical treatment. However, the ALJ acted within the law ordering respondent to provide modification to claimant's vehicle.

b. Home Modifications

Respondent lists seven modifications to claimant's home ordered by the ALJ to which they object. Respondent notes the absence of a physician's order for the modifications. A physician's order, in this case, is not required. Claimant's wheelchair dependence mandates access modifications in his home. The Board finds the no-step entry foundation, ADA stool for the master bathroom, 5 foot roll-in shower for the master bath, 6.5 foot sliding door with a flat threshold, and laminated flooring to be medically reasonable modifications to claimant's home. A third-car garage, however, is considered in the same light by the Board as a new vehicle and does not constitute medical treatment.

CONCLUSION

Claimant has met the burden of proving he is permanently and totally disabled. The purchase of a new vehicle is not medical treatment within the meaning of K.S.A. 2012 Supp. 44-510h(a). Claimant is entitled to modification of his current vehicle,[37] but not a

---

[34] *Id.* at 3.

[35] *Froese v. Trailers & Hitches, Inc.,* No. 1,036,333, 2008 WL 651685 (Kan. WCAB Feb. 29, 2008).

[36] *Bhattarai v. Taco Bell,* No. 261,986, 2003 WL 22401254 (Kan. WCAB Sept. 30, 2003).

[37] As noted in P.H. Trans. (Apr. 6, 2015), Resp. Ex. 1.

new vehicle. Claimant is entitled to modifications of his home, but not the addition of a third-car garage.

AWARD

WHEREFORE, it is the finding, decision and order of the Board that the Award of Administrative Law Judge Thomas Klein dated October 30, 2015, is affirmed in part but modified to the extent that the Award requires respondent to purchase a new vehicle and build a third-car garage on claimant's home.

IT IS SO ORDERED.

Dated this _____ day of April, 2016.

_____
BOARD MEMBER

_____
BOARD MEMBER

_____
BOARD MEMBER

CONCURRING OPINION

This Board Member agrees with the majority, but feels compelled to comment on the dissenting opinion. The dissent indicates "the majority has expanded *Hedrick* to mean that a motor vehicle can never be considered medical treatment." The majority opinion is not that expansive. As the dissent notes, citing several Board decisions, each determination is situational and fact-driven, and the majority decision accordingly applies to only the claim now before the Board.

The dissent, relying on dicta, seeks to limit the application of *Hedrick*, but there is no indication the Court intended to do so. None of the numerous cases cited by the majority and the dissent supports the notion that the purchase of a motor vehicle is medical treatment under the Act. In fact, as observed in both the majority and dissenting opinions,

the Board has consistently interpreted *Hedrick* to mean that medical treatment does not include the purchase of a car. Under the rationale of the dissent, a respondent would be obliged to purchase claimant a new house so that a modified bathroom could be provided.

BOARD MEMBER

DISSENT

The undersigned Board Member disagrees with the majority's finding that the modified vehicle claimant seeks is not "medical treatment" necessary to cure and relieve the effects of his work injury. The Board has consistently interpreted *Hedrick* to mean that medical treatment does not include the purchase of a vehicle. However, in this instance, the majority has expanded *Hedrick* to mean that a motor vehicle can never be considered medical treatment. One must put the facts of *Hedrick* in their correct context.

Ms. Hedrick was injured in a fall. A number of years later, she underwent a total hip replacement. Ms. Hedrick had a 20 percent whole person functional impairment. She sought reimbursement for purchasing a larger automobile. The new automobile had no modifications, was larger and came with a tilting steering wheel.

Here, claimant has an 84 percent whole body functional impairment, has limited use of his hands and is a quadraplegic. In *Hedrick,* the Kansas Court of Appeals stated:

> In closing, we note that this case does not involve a paraplegic claimant who seeks a specially equipped vehicle under the Workers Compensation Act. Among jurisdictions which have addressed that problem, there is a split of authority. The varying results depend to a large degree on the peculiar language found in the various states' workers compensation laws. See 2 Larson's Workmen's Compensation Law, § 61.13(a); 82 Am. Jur.2d, Workers' Compensation § 394, p. 422. Those cases are helpful only to the extent they reinforce our statutory requirement that medical treatment be reasonably necessary.[38]

The aforementioned language leads this Board Member to believe the Kansas Court of Appeals left the door open on this issue. Nothing in *Hedrick* indicates the court found the purchase of a modified vehicle for a paraplegic is not medical treatment, *per se.*

[38] *Hedrick*, 23 Kan. App. 2d at 788.

In *Roberts,*[39] the Board denied claimant's request for hand tools as not being medical treatment. Although the Kansas Court of Appeals reversed and remanded on one tool, the language in the Board's original Order is pertinent:

> Case law does not precisely define medical care or treatment. Treatment is "[a] broad term covering all the steps taken to effect a cure of an injury or disease; including examination and diagnosis as well as application of remedies."[40] Medical compensation under K.S.A. 2004 Supp. 44-510h(a) includes "medical, surgical and hospital treatment, including nursing, medicines, medical and surgical supplies, ambulance, crutches, apparatus and transportation" to obtain medical treatment. An "apparatus" includes an "artificial member."[41] The Board views medical care and medical treatment as synonymous.

It is problematic to "separate what is a reasonable medical necessity from what is dictated by convenience and/or lifestyle [because] these two categories can sometimes overlap."[42] A claimant's "greater ease and comfort" and "all expenses associated with the accommodations that a disability may require" are not what the legislature envisioned as reasonable and necessary treatment.[43]

While the determination is fact-driven and situational, requests found to be reasonable and necessary medical treatment include modification to a home,[44] placement in an assisted living facility,[45] assistance for hygiene and grooming,[46] a

---

[39] *Roberts v. Midwest Minerals, Inc.*, No. 1,028,985, 2012 WL 6101104 (Kan. WCAB Nov. 26, 2012).

[40] *Hedrick,* 23 Kan. App. 2d at 785 (quoting Black's Law Dictionary 1502 [6th ed.1990]).

[41] K.A.R. 51-9-2.

[42] *Butler v. Jet TV*, No. 106,194, 1998 WL 229860 (Kan. WCAB Apr. 14, 1998).

[43] *Hedrick,* 23 Kan. App. 2d at 787.

[44] *Froese v. Trailers & Hitches, Inc.*, No. 1,036,333, 2010 WL 3093219 (Kan. WCAB July 27, 2010).

[45] *Butler v. Jet TV*, No. 106,194, 2004 WL 1058372 (Kan. WCAB Apr. 16, 2004).

[46] *Morey v. Via Christi Health System*, No. 1,027,871, 2006 WL 2632034 (Kan. WCAB Aug. 14, 2006).

stair lift,[47] modification to a vehicle to accommodate a claimant's injury,[48] a hot tub,[49] a computer,[50] a mattress,[51] and a custom-made brassiere.[52]

Examples of requests that were denied as reasonable or necessary medical treatment under the particular facts of each case include a larger car,[53] hospital expenses for an overdose of pain pills,[54] payment of utility bills,[55] housekeeping,[56] home internet service,[57] and a motorized scooter.[58] A motorized scooter that kept a claimant working, but would not cure or relieve his injury, was not medical treatment.[59] A scooter would make a claimant's life "more full," but was not medically necessary.[60]

This Board Member does not understand the requirement that claimant, with all his impairments, must first buy his own motor vehicle. Then after doing so, respondent, under previous case law, would be required to modify the vehicle. While pick-up trucks, vans and automobiles may not be medical equipment, this Board Member firmly believes ambulances built on truck chassis and factory modified vehicles designed to accommodate paraplegics and other severely impaired persons are medical equipment. Requiring claimant to first buy a motor vehicle is an unreasonable impediment placed in his path to

---

[47] *Jardan v. Wal-Mart*, No. 1,048,563, 2012 WL 3279494 (Kan. WCAB July 23, 2012).

[48] *Froese v. Trailers & Hitches*, No. 1,036,333, 2008 WL 651685 (Kan. WCAB Feb. 29, 2008).

[49] *Fernandez v. Safelite Auto Glass*, No. 244,854, 2002 WL 31828620 (Kan. WCAB Nov. 20, 2002).

[50] *Fletcher v. Roberson Lumber Co.*, No. 231,570, 1999 WL 195653 (Kan. WCAB Mar. 30, 1999).

[51] *Conner v. Devlin Partners, LLC*, No. 1,007,224, 2005 WL 831913 (Kan. WCAB Mar. 11, 2005).

[52] *Gorden v. IPB, Inc.*, Nos. 84,110 & 84,173 (Kansas Court of Appeals unpublished decision dated October 27, 2000).

[53] *Hedrick,* 23 Kan. App. 2d at 787 ("The natural and ordinary meaning of 'medical treatment' is not so broad as to include an automobile purchased to afford an individual 'independence in transportation.'").

[54] *Carr v. Unit No. 8169*, 237 Kan. 660, 666, 703 P.2d 751 (1985).

[55] *Bhattarai v. Taco Bell*, No. 261,986, 2002 WL 1838755 (Kan. WCAB July 26, 2002).

[56] *Morey v. Via Christi Health System*, No. 1,027,871, 2006 WL 2632034 (Kan. WCAB Aug. 14, 2006).

[57] *Thompson v. Renzenberger*, No. 1,025,518, 2007 WL 2586176 (Kan. WCAB Aug. 28, 2007).

[58] *Tissue v. Tech, Inc.*, No. 267,507, 2005 WL 2181217 (Kan. WCAB Aug. 29, 2005).

[59] *Abbey v. Cleveland Inspection Services, Inc.*, No. 208,691, 2001 WL 507184 (Kan. WCAB Apr. 30, 2001).

[60] *Tissue v. Tech, Inc.*, No. 267,507, 2005 WL 2181217 (Kan. WCAB Aug. 29, 2005).

medical treatment necessary to cure and relieve the effects of his work injury. Under this type of faulty analysis, claimant would have to buy a bathtub and then have it modified to accommodate him.

BOARD MEMBER

c: Scott J. Mann, Attorney for Claimant
smann@mannwyattrice.com
cbarr@mannwyattrice.com

Mitchell W. Rice, Attorney for Claimant
mrice@mannwyattrice.com
slink@mannwyattrice.com

Terry J. Torline, Attorney for Respondent
tjtorline@martinpringle.com
dltweedy@martinpringle.com

John C. Nodgaard, Attorney for Kansas Workers Compensation Fund
jnodgaard@arnmullins.com

Hon. Thomas Klein, Administrative Law Judge